

TODD KIM  
Assistant Attorney General  
Environment & Natural Resources Division

SEAN C. DUFFY (NY Bar No. 4103131)  
Trial Attorney  
Natural Resources Section  
150 M Street NE  
Washington, DC 20002  
Tel: (202) 305-0445 / Fax: (202) 305-0506  
[sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)

*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**

BLUE MOUNTAINS BIODIVERSITY  
PROJECT,

Plaintiff,

v.

SHANE JEFFRIES, in his official capacity as  
Ochoco National Forest Supervisor; and  
UNITED STATES FOREST SERVICE,

Defendants.

Case No. 2:20-cv-2158-MO

**JOINT PROPOSED CASE  
MANAGEMENT PLAN**

Federal Defendants and Plaintiff, by and through their counsel, have conferred regarding this case and hereby submit the following Joint Case Management Plan for resolution of this matter, in accordance with this Court's November 1, 2021 Order, ECF No. 61.

1. Plaintiff filed this case on December 11, 2020 as a civil action for declaratory and injunctive relief for alleged violations of the National Environmental Policy Act (NEPA), 42U.S.C. §§ 4331 et seq., the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 et

seq., and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., Complaint, ECF No.

1. Plaintiff filed an amended complaint on March 23, 2021. Am. Compl., ECF No. 12

(“Compl.”).

2. The parties agree that the claims in this case involve review of an administrative record and are therefore exempt from initial disclosures and discovery planning requirements set forth in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(1)(B)(i), 26(f)(1). In administrative record review cases, judicial review does not concern disputed facts that the court must resolve. Instead, “the function of the district court is to determine whether or not, as a matter of law, the evidence in the Administrative Record permitted the agency to make the decision it did,” and “summary judgment is an appropriate mechanism for deciding the legal question of whether the agency could reasonably have found the facts as it did.”

*Occidental Eng’g Co. v. INS*, 753 F.2d 766, 770 (9th Cir. 1985).

3. Plaintiff moved to compel completion of the administrative record. Mot. to Compel, ECF No. 10. The magistrate judge denied that motion. Order of Aug. 19, 2021, ECF No. 40. This Court adopted the magistrate’s order and opinion denying the motion to compel and denied Plaintiff’s objections to the magistrate judge’s order. Sept. 29, 2021 Minutes of Proceedings, ECF No. 58.

4. Plaintiff moved for a preliminary injunction to prevent work on the underlying project at issue in this case from commencing in October, 2021. Mot. for Prelim. Inj., ECF No. 41. After briefing and oral argument, this Court granted Plaintiff’s motion and preliminarily enjoined the Project. Sept. 29, 2021 Minutes of Proceedings; Preliminary Injunction, ECF No. 60. Thus, with the exception of the removal of hazard trees near campsites or along roads, pursuant to the Field Guide for Hazard-Tree Identification and Mitigation on Developed Sites in

Oregon and Washington Forests (Filip et al. 2014) (AR 4630– 4751), Defendants are enjoined from allowing or implementing any of the commercial sanitation logging authorized in units 2, 3, and 4, or commercial thinning authorized in units 1 and 5 by the December 7, 2020, Decision Notice for the Walton Lake Restoration Project and Project-Specific Forest Plan Amendments. Prelim. Inj.

5. The parties agree that the claims in this case should be resolved on cross motions for summary judgment and propose the following briefing schedule with proposed page limits:

- **February 3, 2022:** Plaintiff will file a Motion for Summary Judgment and memorandum in support. Plaintiff's Summary Judgment Motion and Memorandum shall be limited to 40 pages in length, excluding caption, signature block, and any certificates of service or compliance.
- **March 3, 2022:** Defendants will file a combined Cross-Motion for Summary Judgment and memorandum in support. Defendants' combined Cross-Motion for Summary Judgment and memorandum in support shall be limited to 40 pages in length, excluding caption, signature block, and any certificates of service or compliance.
- **March 31, 2022:** Plaintiff will file a combined Response to Defendants' Cross-Motion for Summary Judgment and Reply in Support of Plaintiff's Motion for Summary Judgment. Plaintiff's combined Response and Reply shall be limited to 35 pages in length, excluding caption, signature block, and any certificates of service or compliance.
- **April 28, 2022:** Defendants will file a Reply in Support of their Cross-Motion for Summary Judgment. Defendants' Reply shall be limited to 35 pages in length, excluding caption, signature block, and any certificates of service or compliance.

Dated: November 12, 2021

/s/ Tom Buchele (by SCD w/ permission)

Thomas Buchele, OSB No. 081560  
Earthrise Law Center  
Lewis & Clark Law School  
10101 S. Terwilliger Blvd.  
Portland OR 97219-7799  
Telephone: 503-768-6736  
Fax: 503-768-6642  
E-mail: [tbuchele@lclark.edu](mailto:tbuchele@lclark.edu)

Jesse A. Buss (by SCD w/ permission)

Jesse A. Buss, OSB # 122919  
Willamette Law Group  
411 Fifth Street  
Oregon City OR 97045-2224  
Tel: 503-656-4884  
Fax: 503-608-4100  
Email: [jesse@WLGpnw.com](mailto:jesse@WLGpnw.com)

*Attorneys for Plaintiff Blue Mountains*

*Biodiversity Project*

TODD KIM

Assistant Attorney General  
Environment and Natural Resources Division

/s/ Sean C. Duffy

SEAN C. DUFFY  
Trial Attorney  
Natural Resources Section  
150 M Street NE  
Washington, DC 20002  
Tel: (202) 305-0445 / Fax: (202) 305-0506  
[sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)

*Attorneys for Defendants*